THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 28228 OF 1997

DATE: 7-3-2007

Between:

The Depot Manager,
APSRTC, Kamareddy Depot .. Petitioner

And

1. Y.Narsimulu and another .. Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 28228 OF 1997

ORDER:

Aggrieved by the award of the Labour Court II, Hyderabad in I.D.134 of 1993 dated 20.9.1996 whereby the 1st respondent was directed to be reinstated into service with continuity of service, but with 25% back wages, the present writ petition is filed.

The 1st respondent, a conductor in the A.P.S.R.T.C, was unauthorizedly absent from duty for a period of 95 days in different spells during the period January 1990 till May, 1991. Details of his attendance for the period January 1990 to May 1991 are given in Ex.M-1. Disciplinary action was initiated for his unauthorized absence from duty. During the course of enquiry, while admitting that he was absent, the 1st respondent contended that his frequent illness resulted in his inability to attend duties and that his absence was on medical grounds and not otherwise. Both the enquiry officer and the disciplinary authority found the explanation given by the 1st respondent for his unauthorized absence from duty wholly unsatisfactory and imposed on him the punishment of removal from service. The Labour Court, while exercising its jurisdiction under Section 11-A of the I.D. Act, came to the conclusion that the absence of the 1st respondent during the relevant period was due to proper justified cause, it could not be said that he had committed any misconduct and as such the punishment of removal was disproportionate and was not sustainable. The Labour Court set side the order of removal dated 10.4.1997 and directed his reinstatement with continuity of service, but with 25% back wages.

The Labour Court, under Section 11-A of the Industrial

Disputes Act, 1947, has the power to re-appreciate the evidence on record and to examine the proportionality of punishment imposed on the workman by the employer. The jurisdiction under Section 11-A has to be exercised by the Labour Court on examining the entire evidence placed before it and it is only thereupon is the Labour Court justified in arriving at its conclusions based on such evidence on record. Except to hold that the absence of the 1st respondent – workman during the relevant period, was justified, no reasons are forthcoming as to the basis on which such a conclusion was arrived at by the Labour Court. As noted above Ex.M.1 would show that the from January, 1990 till May, 1991, the 1st respondent had remained unauthorizedly absent in short durations virtually every month. It is not as if his absence was continuous in which event there may have been justification in contending that he was unable to attend duty on account of sickness. The very fact that the workman did not seek sanction of leave prior to his absence or immediately thereafter would show that the his absence from duty was unauthorized. The perfunctory manner in which the Labour Court has dealt with the matter leaves much to be desired. If the Labour Court had held that the charges were not established, there was no justification for the Labour Court nor has it given any reason as to why the workman should be denied 75% of his back wages. If, on the other hand, the charge has been held to be established, the Labour Court should have assigned reasons as to why it though it fit to direct reinstatement of the workman with continuity of service and 25% back wages. Before examining the quantum of

punishment, the Labour Court ought to have exercised its jurisdiction under Section 11-A to re-appreciate the evidence on record. The award does not reflect consideration of evidence of the petitioner management. The Labour Court merely relied on Ex.M-7 statement of the workman without examining any of the other exhibits marked in the enquiry. The award of the Labour Court is accordingly set aside and the matter remanded for its fresh consideration in accordance with law.

Sri A.K.Jayaprakash Rao, learned counsel for the 1st respondent – workman would submit that pursuant to the award of the Labour Court, 1st respondent was reinstated into service in May 1997 and that he is continuing in service as on date. Learned counsel would request this Court to decide the appropriate punishment instead of remanding the matter back to the Labour Court. It is necessary to note that this Court, in exercise of its certiorari jurisdiction, would not, ordinarily, substitute its views for that of the Labour Court. It is the Labour Court which has been conferred jurisdiction, under Section 11-A of the I.D. Act, of re-appreciating the evidence on record and determining the punishment to be imposed for proved misconduct of the workman. It is this power under Section 11-A which the Labour Court has failed to exercise. As the award has now been set aside, the Labour Court would now be required to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act. I see no reason to step into the shoes of the Labour Court to examine these aspects.

Sri A.K.Jayaprakash Rao, learned counsel for the first

respondent, would submit that the award being set aside would result in a situation where the earlier order of removal would come into force resulting in the 1st respondent being thrown out on the street though he has been continuing in service from May 1997. Ends of justice would be met if the Labour Court is directed to pass an award, after hearing both sides, as expeditiously as possible, in any event, not later than four months, from the date of receipt of a copy of this order. Till an award is passed by the Labour Court, the 1st respondent shall be continued in service.

The writ petition is accordingly disposed of. No order as to costs.

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7-3-2007

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